

ROBERT W. HUMPHREYS

IBLA 95-650

Decided January 6, 1997

Appeal from a decision by the Nevada State Office, Bureau of Land Management, declaring the Tule #1 through #3 placer mining claims (NMC 681074 through NMC 681076) abandoned and void for failure to pay annual rental fees for the 1994 assessment year.

Reversed.

1. Mining Claims: Location--Mining Claims: Placer Claims--Mining Claims:
Recordation of Certificate or Notice of Location

Nevada law does not define the date of location as the date the location notice was posted on the ground. Under Nevada law, the date of location of a placer claim is the date stated on the location notice posted on the claim and repeated in the location certificate filed with the county recorder, and that date can differ from the date of posting.

APPEARANCES: Richard W. Harris, Esq., Reno, Nevada, for appellant; R. W. Humphreys, pro se (statement of reasons).

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Robert W. Humphreys has appealed an August 17, 1995, decision issued by the Nevada State Office, Bureau of Land Management (BLM), declaring the Tule #1 through #3 placer mining claims (NMC 681074 through NMC 681076) abandoned and void for failure to pay the \$100 per claim annual rental fees for the 1994 assessment year by August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993, P.L. 102-381, 106 Stat. 1374 (1992). The decision was stayed by order dated October 11, 1995.

Counsel for Humphreys has requested expedited consideration of the appeal. He states: "The Tule 1-3 placer claims have been overstaked by a rival locator, who is conducting mining operations within the area of conflict. Until the validity of his claims has been adjudicated, Mr. Humphreys cannot commit the resources to defend and develop his claims."

The record shows that Humphreys filed certificates of location for the Tule #1 through #3 with BLM on September 1, 1993, and paid \$405 (\$135 per

claim) as recording and rental fees. The location certificates state that Humphreys "caused to be located the [name] Placer Mining Claim * * * in Esmeralda County, Nevada, on the 1st day of Sept, 1993."

The BLM decision noted that the certificates were dated August 29, 1993, but "the location date is given prospectively as September 1, 1993." BLM determined that, by signing the certificates, Humphreys had "certified that he caused (past tense)" the claims to be located and, for this reason, "[t]he location date should properly have been shown to be the date the notices were posted on the claims which must have been August 29, 1993, or earlier." On this basis BLM found the claims to have been located during the assessment year beginning at noon on September 1, 1992, and concluded that 43 CFR 3833.1-5 (1993) required Humphreys to pay rental fees for both the 1992-93 and 1993-94 assessment years. BLM concluded: "Rental was paid only for the 1993 assessment year for those claims mentioned above but not for the 1994 assessment year. Therefore the subject claims are hereby declared abandoned and void by operation of law."

On appeal, Humphreys explains that for some time he had performed assessment work on a group of claims named the Tule #1 through #15 claims for Mr. E. Loving, the owner of those claims and a friend of his, and continued to perform the assessment work after Loving's disappearance in December 1991. When the rental fee requirement was imposed, Humphreys contacted Loving's relatives, but they did not wish to pay the rental necessary to maintain those claims. Humphreys explains that he could not afford \$3,000 for rental fees and allowed Loving's 12 claims to lapse.

Humphreys then located and filed location certificates for three claims. "So I set my location markers on August 29, 1993, filled out my location forms & September 1, 1993 presented them at the Esmeralda County recorders office to be filed * * * and drove to Reno BLM with a copy of the form filed in Esmeralda County." Humphreys contends that three people in the BLM office reviewed the forms, and that he was told by the cashier that the amount he owed was \$405. He states that he "was not aware that the date I actually set my claim markers would have any bearing on the legality of the filing," and that he understands "that the location markers have to be in place prior to the filing." He argues that he intended to have the effective date of his claims as September 1, 1993, because valid claims existed on the land until extinguished due to the failure to pay rental fees by the close of business on August 31, 1993, "any claim I filed prior to that time and date would have been invalid." He also states that, if the cashier had told him that additional rental fees of \$100 per claim were due, he would have paid them.

The issue on appeal is whether BLM correctly found August 29, 1993 (the date location notices were posted on the ground), to be the date of location of the Tule #1 through #3 placer mining claims (NMC 681074 through NMC 681076).

The Department's need to define the date of location of a mining claim arose with the enactment of section 314(b) of the Federal Land Policy and

Management Act, which requires the owner of an unpatented mining claim to file a copy of the notice or certificate of location with the proper BLM office "within ninety days after the date of location of such claim * * *." 43 U.S.C. § 1744(b) (1994). By regulation, the "date of location" of a mining claim is "the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated." 43 CFR 3833.0-5(h).

The date of location defined by Nevada law was addressed in Richard Bergen, 117 IBLA 239 (1991). The Board stated:

Nevada law provides that a mining claim is located by monumenting the boundaries of the claim, constructing a location monument, and "[p]osting in or upon the monument of location a notice of the location, which must contain," along with other information, "[t]he date of location." Nev. Rev. Stat. 517.010 (1989). Additionally, Nevada law requires a locator to file with the local country recorder "duplicate certificates of location which contain," along with other information, "[t]he date of the location." Nev. Rev. Stat. 517.050 (1989). These certificates must be filed within 90 days of posting the notice of location. Nev. Rev. Stat. 517.040 (1989). Federal law requires that a copy be filed with BLM. 43 U.S.C. § 1744(b) (1988); 43 CFR 3833.1-2.

Under Nevada law, the date of location is the date stated in the notice of location posted on the claim and repeated in the certificate of location filed with the county recorder. Boyad Tanner, 113 IBLA 387, 390 (1990); Jim Spicer, 42 IBLA 288 (1979); Southwestern Exploration Associates, 33 IBLA 240 (1977).

Richard Bergen, *supra* at 245-46. The Board concluded that the date stated in the location certificate filed with BLM was the date of location of the mining claims. The consequence was that the claims were held to be null and void because copies of the location certificates had not been filed with BLM within 90 days of the "date of location." See also, Jim Spicer, *supra*; Southwestern Exploration Associates, *supra*.

[1] The Nevada statutes cited in Richard Bergen apply to lode claims. The statute governing placer locations also requires posting "a notice of the location containing * * * [t]he date of location." Nev. Rev. Stat. 517.090 (1995). Likewise the certificate of location filed with the country recorder must contain "[t]he date of location." Nev. Rev. Stat. 517.110 (1995). Thus, in accord with the previously cited decisions, the date of location of a placer claim in Nevada is the date stated in the location notice posted on the claim and repeated in the location certificate filed with the county recorder.

BLM's reasoning that the date location notices were posted on the claims should have been the "date of location" is not without merit. In most cases, a posted location notice will identify the date of posting as the date of location because its purpose is to give notice of the

existence and extent of the claim, or at least the locator's intent to appropriate the ground by locating a mining claim. 2 American Law of Mining, § 33.03[1] (2d ed. 1995). Recognizing that it is potentially self-defeating to post a location notice announcing that a mining claim will be located at some future date, there may be a good and valid reason for doing so. However, as a matter of law, there is nothing that dictates that a location notice must be posted before or after discovery, or before or after the claim has been monumented and other required work completed. Id. §§ 33.02[1], 33.03[4]; see Nev. Rev. Stat. 517.090 (1995); see, e.g., Martin v. Sterner, 340 P.2d 1004, 1007 (Nev. 1959). After the other acts of location have been completed, the "date of location" of the claim will "relate back" to the date stated in the posted notice. See Nash v. McNamara, 93 P. 405, 411 (Nev. 1908).

We find nothing in Nevada law that required Humphreys to identify the date he posted the location notices as the "date of location" on the location certificates subsequently recorded with BLM. In Nevada, a location notice and a certificate of location are regarded as separate documents. The certificate of location need not be a copy of the location notice, although, as noted above, both must state a "date of location" of the claims. See 2 American Law of Mining, § 33.03[3] (2d ed. 1995).

Humphreys' statement of reasons indicates a belief that Loving's claims were valid through August 31, 1993, and that September 1, 1993, was the first day he could locate his own claims. It appears he also may have believed that the date he recorded the claims with Esmeralda County, as required by statute, was their date of location. See Nev. Rev. Stat. §§ 517.100, 517.110; Claybaugh v. Gancarz, 398 P.2d 695, 701-02 (Nev. 1965). Whether or not he was correct, Nevada law does not define the date of posting a location notice as the "date of location" of the claim. ^{1/} Thus, neither Nevada law nor the record provides a basis for concluding that the "date of location" of the Tule #1 through #3 placer mining claims was a date other than September 1, 1993, as stated in the location certificates. In addition, as noted above, a primary purpose for posting a location notice is to give notice of the claimant's intent to appropriate the ground by locating a mining claim. The facts in this case clearly support a finding that Humphreys accurately stated the date that he intended to locate the claim.

^{1/} Nev. Rev. Stat. 517.300.2 provides: "A person who willfully and knowingly makes a false date material statement on the certificate of location or on any map required by this chapter is guilty of a category D felony and shall be punished as provided in NRS 193.130." Appellant's location certificates state that the claims were "located" on Sept. 1, 1993, but do not expressly state that the corner monuments were erected on that date rather than on Aug. 29, 1993, as asserted in the statement of reasons.

It follows that BLM incorrectly concluded that Humphreys was required to pay a \$100 per claim rental fee for the assessment year beginning September 1, 1992. Compare Bobbie M. Brown, 132 IBLA 393 (1995) (mining claim located Aug. 27, 1993). The rental fee that was due was \$100 per claim for the assessment year beginning September 1, 1993, and that amount was paid when the claims were filed with BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the stay granted October 11, 1995, is dissolved, and the August 17, 1995, decision of the Nevada State Office is reversed.

R. W. Mullen
Administrative Judge

I concur.

David L. Hughes
Administrative Judge

